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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,649	09/21/1999	ANDREW J. SZABO	SZABO-201.1	3645

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EXAMINER

RIMELL, SAMUEL G

ART UNIT

PAPER NUMBER

2175

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/400,649

Applicant(s)

SZABO, ANDREW J.

Examiner

Sam Rimell

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2175

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

SAM RIMELL  
PRIMARY EXAMINER  
AU 2175

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-31 and 37-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 32-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of Williams III('350).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 35 and 67-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of Ecer ('564).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 44-46, 52-59 and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of MacGregor et al. ('621).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 47-49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of MacGregor et al. ('621) and Williams III ('350).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 50, 60, 65, 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of MacGregor et al. ('621) and Ecer ('564).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

#### Remarks

With the Request for Continued Examination, claims 29, 30, 31, 34, 35, 44, 45, 46, 49, 50, 59, 60, 62, 67, 68, 72 and 73 have been amended. Each of these claims will be individually addressed.

The claims have been further mended to define four specific features. These are:

- (1) Joint optimization;
- (2) Model based correspondence;
- (3) The presence of a statistical model;
- (4) A statistical correspondence.

Each of these shall be addressed individually.

(1) Examiner maintains that Shepley and Balintfy disclose this feature. Shepley defines at least one user input variable which can be optimized (such as nutritional preferences) and

Balintfy discloses at least one other variable that can be optimized (such as cost). Since at least two variables are being used to conduct the optimization process, it is clear that a joint optimization is occurring.

(2) Without defining what the “model” actually is, a “model based correspondence” can refer to virtually any form of correspondence. For example, column 6, lines 30-31 refer to prestored nutritional data, which can be read as a “model”. The comparison of the user entered data to the prestored nutritional data constitutes a model based correspondence. Applicant’s argument that a model is a “high level description of a process” is not considered to be the broadest reasonable definition of the term. A “model” can be a collection of data, a collection of rules, or even a physical structure.

(3) Since “statistics” can involve any type of data, a statistical model can be read as simply a collection of any form of data. The description of a model as a “high level description of a process” is not the broadest reasonable interpretation of the term.

(4) A statistical correspondence reads as a correspondence between sets of data, since statistics are nothing but data. The correspondence described at column 6, lines 30-31 of Shepley reads as such a correspondence.

The claims include additional amendments which are not seen as having any bearing, such as changing the term “characteristic” to “relevance parameter”. These two terms are appear to have exactly the same meaning.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art

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of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.



Sam Rimell  
Primary Examiner  
Art Unit 2166